

### REMARKS

The non-final Office Action, mailed October 11, 2007, considered claims 1-51. Claims 1-32 and 35-51 are rejected under 35 U.S.C. 102(a) as being anticipated by Microsoft White Paper: "Enabling Quality of Service Windows Sockets-based Mission Critical Applications" posted May 20, 1999, (hereinafter referred to as "Microsoft White Paper"). Claims 33 and 34 were rejected under 35 U.S.C. 103(a) as being unpatentable over the Microsoft White Paper.

Through further investigation, Applicant's Attorney has determined that the contents of the Microsoft White Paper are based on an earlier document published in February, 1999, entitled "Specification of the Qualitative Service Type" (hereinafter "Qualitative Service Type document"). The Qualitative Service Type document is cited in an accompanying IDS.

By this amendment, no claims have been cancelled or added. Claim 40 was rejected under 35 U.S.C. 112 and has been amended to resolve the 112 antecedent basis issue. Accordingly, Applicants respectfully request that the 35 U.S.C. 112 rejection to claim 40 be withdrawn.

Submitted along with this response is an unequivocal Declaration from Inventor Timothy Moore under 37 CFR 1.132 that he and his co-inventors, Yoram Bernet and Ramesh Pabbati conceived of and invented the subject matter disclosed in the Microsoft White Paper and the Qualitative Service Type document. (See MPEP 716.10). Since the Microsoft White Paper and the Qualitative Service Type document were published less than one year before the filing date of the current application, the Microsoft White Paper and the Qualitative Service Type document are, at best, 102(a) art. Disclaimer by the other authors of the Microsoft White Paper is not required. (See MPEP 716.10). However, the declaration does declare that the inventorship of the present application is correct and that the cited portions of the Microsoft White Paper (including any portions of subject matter derived from the Qualitative Service Type document) disclose subject matter derived from the applicants of the present application. Accordingly, applicants respectfully submit that the cited portions of the Microsoft White Paper can not be used against the pending claims.

Each pending claim was rejected under 35 U.S.C. 102(a) & 103(a) in view of the Microsoft White Paper. However, based on the contents of the declaration from Timothy Moore, Applicants respectfully submit that neither publication qualifies as prior art and that the pending

claims are thus in condition for allowance. In the event that the Examiner finds remaining impediment to a prompt allowance of this application that may be clarified through a telephone interview, the Examiner is requested to contact the undersigned attorney at (801) 533-9800.

Dated this 30<sup>th</sup> day of January, 2008.

Respectfully submitted,

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